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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

**BROOKSHIRE BROTHERS HOLDING,
INC., ET AL**

CIVIL ACTION NO. 04-1150

VERSUS

JUDGE TRIMBLE

TOTAL CONTAINMENT, INC., ET AL

MAGISTRATE JUDGE WILSON

MEMORANDUM RULING AND JUDGMENT

Before the court is a motion for summary judgment [R. 563] filed by defendant Evanston Insurance Company ("Evanston"). Evanston provided commercial excess insurance to Total Containment, Inc. ("TCI") from September 21, 1997 through July 9, 1999. During this time, the underlying commercial general liability insurance for TCI was provided by Gulf Insurance Company ("Gulf"), now Travelers Indemnity Company ("Travelers"). The court recently considered a motion for summary judgment by Gulf on the issue of coverage owing from these underlying policies. We granted Gulf's motion, finding that Brookshire's only purported claim on the 1997 Policy issued by Gulf is prescribed, having not been filed timely given the date plaintiffs filed this suit. We also found that, were this purported claim not prescribed, the Gulf policies still would not owe coverage due to the operation of several provisions therein.

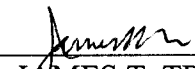
The effect of this prior ruling on the instant motion is clear. The excess insurance provided from September 21, 1997 until July 9, 1999 cannot be triggered unless the underlying

primary general liability policy has been exhausted.¹ This court found that the express terms of the underlying Gulf policies contain a \$100,000 per occurrence self-insured retention, which was not fulfilled by the relatively small \$2,174.68 purported claim at issue. Accordingly, the court held that coverage was not triggered, and clearly not exhausted.

Now, therefore, it is

ORDERED, ADJUDGED AND DECREED that Evanston's motion be GRANTED and that all claims by plaintiffs against this defendant arising out of the four (4) excess insurance policies issued in favor of defendant TCI be DISMISSED with prejudice.

THUS DONE AND SIGNED in chambers at Alexandria, Louisiana this 7th day of September, 2007.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

¹See policies attached to Evanston's motion as Exhibits A, B, C and D, at "Declarations."